IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

(1) S.B.CIVIL WRIT No. 5624 of 1994
(Arvind Singh Mewar & Ors. Vs. State of Raj.&Ors.)

(2) S.B.CIVIL WRIT No. 4929 of 1994
(Gattani Resorts (P) Ltd. & Anr. Vs. State of Raj.&Ors.)

(3) S.B.CIVIL WRIT No. 5103 of 1994
(Ashok Kumar Mehta & Ors. Vs. State of Raj.& Ors.)

(4) S.B.CIVIL WRIT No. 5603 of 1994
(Bhanwar Lal & Ors. Vs. State of Raj.& Ors.)

(5) S.B.CIVIL WRIT No. 1804 of 1997
(Smt. Neena Saboo Vs. State of Raj.& Ors.)

UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA.

Date of order : 10th April, 2007

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr. JP Joshi }
Mr. Dilip Kawadia }
Mr. Arun Bhansali } the petitioner.
Mr. LR Mehta }

Mr. Tribhuvan Gupta }
Mr. NM Lodha, AAG } for the respondent.
Mr. OP Boob, AGA }

BY THE COURT:

All these writ petitions involve common questions of law. Though they relate to different parcels of lands, but since the main controversy involved in these cases is

common they have been decided by this common order.

The skeleton facts, bereft of avoidable details, and relevant for the decision of the present controversy are, that on October 3, 1981, a notification under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereafter referred to as the Rajasthan Act) was issued, notifying that the lands covered by the notification are likely to be needed for public purpose viz., for the university respondent. Thereupon certain persons submitted objections under Section 5A, and the notification under Section 6, read with Section 17, came to be issued on 19/24th February 1982. It may be mentioned here, that the notification under Section 4 did come to be challenged before this Court by way of a writ petition being S.B.C.W.P.No.255/82, and that writ petition ultimately came to be decided on 3rd November 1993, holding that since so far only notification under Section 4(1) has been issued and no other proceedings had taken place, the examination of the notification under Section 4(1) on the anvil of non-compliance of any of the provisions of Section 4 has not arisen. The question of non-compliance with the other provisions of the Act after notification under Section 4(1) can only be gone into if on following the procedure the State Government, on being satisfied about the requirement of the land, makes a declaration under Section 6, in which event it will be open to the aggrieved party to challenge the said declaration,

on the ground that basic foundation of validity of Section 4 has not been laid. With these findings, the writ petition was dismissed. Thereafter again came to be issued a notification dated 16.9.94 published in the Rajasthan Gazette Extra-ordinary dated 17.9.94 purporting to be under Section 6 read with Section 17(4) of the Rajasthan Act, directing that the provisions of Section 5A shall not apply. However, it appears that it was realised that the Rajasthan Act has already repealed by then, way-back in the year 1984 itself, another notification came to be issued on 29.9.94, published in the Rajasthan Gazette Extra-ordinary dated 30.9.94, purporting to be under Section 17(4) read with Section 6 of the Rajasthan Land Acquisition Act, 1894. It is again a different story, that there is no statute like Rajasthan Land Acquisition Act, 1894, rather it was a Central legislation, being Land Acquisition Act, 1894 and the State Legislation was Rajasthan Land Acquisition Act, 1953, both of which stood repealed by the Central Legislation, being Land Acquisition Act, 1984 (hereafter referred to as the Act of 1984). However, notwithstanding all this, the notification dated 29.9.94 was purportedly issued under the Act of 1894, directing dispensing with the inquiry under Section 5A, and making declaration under Section 6, that in view of the urgency, the declaration is made that the land is required for the public purpose, being the development of the University-respondent. Against this notification, again a writ petition being

No.S.B.C.W.P.No.4813/94 was filed, but then that was withdrawn with liberty to file fresh writ petition, and accordingly, challenging the acquisition proceedings, the bunch of present writ petitions had been filed.

Arguing the writ petitions, it was submitted by Mr. Joshi, who submitted the leading arguments, that in the present case invocation of the provisions of Section 17 is wholly without any jurisdiction, inasmuch as, there is no material whatever available on record even of the State Government to enable it to invoke the urgency clause contemplated by Section 17, and the provision has been invoked without any application of mind whatever. The other ground given was, that the proceedings for acquisition had commenced, as stated above way-back in the year 1981, and there was no occasion for invoking urgency clause in the year 1994, i.e. after about a bit less 13 years. Other arguments raised was, that in view of the provisions of Section 6 of the Act of 1984, a declaration could not be issued after expiry of three years from the date of publication of the notification under Section 4(1), and after commencement of the Act of 1984. It was contended that even if it is assumed, that by introduction of the said amendment Act of 1987, which came into force on 3.1.87, the limitation for issuing declaration under Section 6, is deemed to have been extended, still it could be issued in any case only upto 2.1.88, and therefore also,

the declaration under Section 6 is vitiated. It was submitted that when even the time for making declaration under Section 6 has already expired, it could possibly not be made by invoking the provisions of Section 17(4) either. Though in the writ petition, other ground was also taken on the anvil of the provisions of Section 39 to 41, and Rule 32 of the Rules, to have not been complied with, as it is a case of acquisition for a company, the entire proceedings for acquisition are bad. However, during course of arguments, this argument was specifically not pressed.

On the other hand, learned counsel for the respondent, Mr. Lodha, submitted that in the present case objections were received under Section 5A, and on those objections, a report was also submitted under Section 5A, and therefore, the declaration made under Section 6 cannot be challenged. It was also submitted that simply because on account of the previous writ petition No.255/82 the land acquisition proceedings happened to be delayed by virtue of the stay order of this Court, it cannot be said that there was no sufficient ground to invoke urgency clause, rather the passage of time aggravated the urgency, and the urgency clause was rightly invoked. Replying the contention about limitation, it was submitted that since in the writ No.255/82 there was interim stay granted by this Court, staying the further proceedings, the limitation did not continue to run, and after the writ petition was decided on

3.11.93, within one year, the declaration has been made on 29.9.94, and therefore, that is clearly within time. Mr. Lodha also submitted that as a matter of fact, even before passing of the interim stay order in the previous writ No.255/82, wherein the stay was granted on 2.3.82, declaration under Section 6 had already been made on 19/24-2-82 itself, and that having not been set aside in the order dated 3.11.93, the contentions of the learned counsel for the petitioner are misplaced.

In rejoinder Mr. Joshi invited my attention to the said report under Section 5A, which has been produced by the respondents as Annex.R/3/2 in the writ petition No.4929/94, and submitted that it purports to recite that objections were received under Section 5A, they were heard for one month and the objections were not found to be sustainable for want of documentary evidence, and therefore, the Land Acquisition Officer purportedly found the land to be appropriate to be acquired for the extension/development of the Udaipur University, and with this, he requested for issuance of notification under Section 6, and order under section 17, so that further proceedings for acquisition may be undertaken, and accordingly, the notification Annex.R/3/3 was issued on 19/24-2-82. It was submitted that if the State Government believed that the inquiry has been conducted under Section 5A, then there was no necessity of invoking the provisions

of Section 17, but then the State Government itself has not acted upon the said report submitted under Section 5A, and therefore only, has invoked the powers under Section 17, while from a look at the aforesaid report Annex.R/3/2 itself, it is clear, that there was not even a whisper of any sort of urgency being there, and even thereafter no material has been placed on record to show, that there was any urgency. It was reiterated that even after the judgment Annex.8, there is no material to show that there was any urgency, the declaration made on 29.9.94 is liable to be set aside.

Learned counsel for the petitioner then submitted, that he has produced the certified copy of the judgment dated 3.11.93, in the aforesaid writ petition No.255/82 as Annex.8 in writ petition No.4929/94, and a look thereat would show, that the preliminary objection was raised about the writ being premature, on the anvil, that so far only notification under Section 4(1) has been issued, and no further proceedings had taken place under the Rajasthan Act, thereafter, the petition is premature, which objection has been noticed at page-5 of Annex.8, this objection was contested on the side of the petitioner, by submitting that since acquisition is for the company, unless the formalities required to be completed, were completed, there did not exist even the basic foundation to issue notification under Section 4, and this Court upheld

the preliminary objection, and the writ petition was dismissed as premature. In other words, the fact of making a declaration under Section 6 read with Section 17, vide notification dated 29/24-2-82, was never brought to the notice of the Court, while deciding the previous writ petition vide Annex.8, the contention is not open to be raised by the learned counsel for the State.

I have considered the submissions and have gone through the record.

From the above narration of facts and submissions, in my view, the precise thing required to be considered is, as to whether the invoking of the powers under Section 17 (4) by the State Government, and accordingly issuing notification dated 29.9.94 can be sustained. Obviously, if it can be sustained, then the writs have to fail, and if it cannot be sustained, then interference is required to be made in the notification dated 29.9.94 making declaration under Section 6 with the help of Section 17. It may be observed that in view of the various judgments of Hon'ble the apex court, within a narrow limits, the exercise of powers under section 17 can be a subject of judicial review.

For the purpose of deciding this question, again two aspects emerge viz., firstly as to what is the scope of powers of this Court to examine the validity of the

exercise of powers under Section 17, and the second aspect would be that if the case is established to be one, where the exercise of powers under Section 17 does fall within the scope of scrutiny, then as to whether what are the parameters on which it is to be examined or scrutinised, and obviously, as to whether it stands the scrutiny or not.

This court very recently had the occasion to examine the question as to when the powers under section 17 can be exercised, and what is the scope of interference, in case where the powers under section 17 have been exercised, in Smt. Nand Kanwar V/S State & Ors. S.B.C.W. No. 1529 of 1992 decided on 2nd March, 2007, and after reviewing the entire case law, as cited at the bar, the legal position regarding invoking the powers under section 17, as emerging from the series of judgments considered therein was found to be, that it would depend upon facts and circumstances of each case, as to whether in that particular case the powers under Section 17 are to be invoked or not.

Obviously, therefore, irrespective of nature of purpose for which the acquisition was sought, it is clear that the powers under Section 17 could be invoked if the situation so warrants, and therefore, now I have to examine within the limits of the scope of my jurisdiction, as to whether the present was a case where the urgency existed, rather as to whether there was any material available with

the State Government to form a subjective satisfaction, about the existence of urgency, for invoking the powers under Section 17.

In this regard, it may be noticed here, that in writ No.4929/94, in para-29, it has clearly been contended that from perusal of notification it is clear that the nature of urgency has not been shown and the authorities concerned have not applied its mind to the fact whether the land in question is urgently required. It has also been contended that recitals made in the notification showed absolutely non-application of mind. Then in ground (h) again it has been contended, that the government has invoked the provisions of Section 17(4) without application of mind, as a matter of fact, there is no urgency for acquisition of the land, and therefore, the notification under Section 17(4) cannot be sustained. It has also been contended in ground (i) that it has not been stated in the notification that in the opinion of the Government there exists an urgency to take recourse to the provisions of Section 17(4). Then a look at the reply filed on behalf of the State would show, that replying para-29 it has been submitted, that the matter of urgency was duly considered by the State Government, in view of the requirement of University, as well as the delay caused due to acquisition proceedings having remained pending before this Court, and after application of mind declaration was issued, and that

the matter was considered at the highest level and concerning Minister also approved the action before declaration was made. Then replying ground (h), it was submitted, that the petitioners themselves raised objections, which were considered by the Land Acquisition Officer, and report was also sent under Section 5-A, therefore, it is denied that the notification issued under Section 6 read with Section 17(4) is without application of mind, or that there was no urgency.

In my view, this pleading of the respondent speaks volumes in favour of the petitioners, about the non-application of mind. In my view, this pleading in substance means, that the action was taken as the report was submitted under Section 5A, after hearing the objections, when it pleads that "therefore, it is denied that notification issued under Section 6 read with Section 17(4) is without application of mind or that there was no urgency." As noticed above, even according to the respondents, the only report submitted is Annex.R/3/2. This is report dated 4.1.82, and as already noticed above, while noticing submissions of the learned counsel for the petitioners, that this is a communication by the Land Acquisition Officer Tehsildar, Girwa to the Secretary, Education, for issuance of declaration under Section 6, and recites, that notification under Section 4 has been issued, which has been published, then the objections were

received, and finds that no such substantial objection has been raised, which was required to be heard, and therefore, he found the land to be fit for acquisition, and requested for issuance of notification under Section 6, and the orders under Section 17 authorising him to take possession, and it is on this report that Annex.R/3/3 dated 24.2.82 appears to have been prepared or made. Then a look at notification dated 29.9.94 again shows, that this is verbatim copy of Annex.R/3/3.

Even at the cost of repetition, I am constrained to observe, that even in Annex.R/3/2, there was not even a whisper about existence of any urgency, much less was the nature of urgency shown, rather the Tehsildar had miscomprehended the provisions of Section 17, and requested issuance of orders under Section 17 for authorising him to take possession of the land, while requesting for issuance of notification under Section 6.

The other aspect of the matter, as observed above is, that even according to the State, since objections had been submitted, and inquiry was conducted, and report was submitted under Section 5A, therefore, it cannot be said that invoking powers under Section 17(4) is without application of mind, meaning thereby, that apart from this report there was no other material available on record with the competent authority, to form an opinion about existence

of urgency. While as observed above, in the report there is not even a whisper of urgency, therefore, it cannot be said that the invoking of the powers under Section 17 is based on any material on record, so as to sustain the action.

Another aspect of the matter is, that receiving objections, hearing them and submitting the report, and at the same time, invoking the powers under Section 17, cannot go together: as by invoking powers under Section 17, the inquiry under Section 5A is dispensed with. To rely upon both, is like having the cake and eating it as well. I don't want to dilate on the point, that the nature of urgency required for invoking powers under Section 17 should be of such a magnitude, as it cannot brook the delay of 30 days, or a reasonable time, required for completing the inquiry. However, as contended by the respondents, that inquiry had been conducted, then obviously there was no necessity for invoking powers under Section 17(4), and since the case of the respondents is, that the inquiry was conducted, even on that ground also, invoking powers under Section 17(4) is required to be interfered with.

Then so far as holding of the inquiry is concerned, that report has not been accepted by the State Government, otherwise accepting that report, straightway declaration under Section 6 would have been made, without invoking the aid of Section 17. Thus it appears, that the

matter was proceeded in an absolutely hotchpotch manner.

Thus, taken from any standpoint, invoking of powers under Section 17, can possibly not be sustained.

The net result of the aforesaid discussion is, that the writ petition is partly allowed, and the notification dated 29.9.94, or for that matter dated 16.9.94, so far as they relate to the lands, belonging to or claimed by the petitioners, in this bunch of writ petitions are concerned, cannot be sustained, and is quashed, only to that limited extent.

At the same time, since even this part of the notification has been quashed, only on account of invoking powers under Section 17 having not been sustained, I think it appropriate, that the petitioners only should be given an opportunity to raise objections, and hearing thereon. Accordingly, while quashing the above part of the declarations, the matter is sent back to the S.D.O., Girwa District Udaipur, with a direction to hear the petitioners only (obviously or their counsel) and receive the objections, if they so like to make, and after considering those objections, and hearing the petitioners on them, submit a fresh report under Section 5A, by considering the matter objectively and dispassionately. For the purpose of submitting objections and hearing, the petitioners are

directed to appear before the learned S.D.O., Girwa District Udaipur on 7th of May 2007. It is made clear that no further notice would be required to be given to any of the petitioners. Obviously the State Government would thereafter take appropriate decision on the report so submitted, dispassionately and objectively. It is also clarified, that if any of the petitioner/petitioners fail to appear on the aforesaid date, before the aforesaid officer, in that event, the writ petition with respect to the land of that particular petitioner will be deemed to have been dismissed. The parties are left to bear their own costs.

(N P GUPTA),J.